

EXHIBIT B

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1 THE CLERK: 18 civil 864, In Re: Dealer Management
2 Systems Antitrust.

3 THE COURT: Good morning, everybody.

4 MS. WEDGWORTH: Good morning, your Honor.

5 THE COURT: We have a two-judge panel this morning.

6 JUDGE GILBERT: No dissents, though.

7 THE COURT: Yeah. No, that's right. We will be
8 totally amazed this morning.

9 For plaintiffs we have?

10 MS. WEDGWORTH: Peggy Wedgworth on behalf of the class
11 dealership.

12 MR. NEMELKA: Mike Nemelka on behalf of the Direct
13 Purchaser Vendorfy, Cox Automotive, MVSC, and Authenticom.

14 THE COURT: Okay.

15 MS. McNULTY: Shannon McNulty, liaison counsel for all
16 plaintiffs.

17 MR. RICHTER: Frank Richter, Robbins Gellar for the
18 PSC for dealer Fox.

19 THE COURT: Okay. Beautiful. And we have one for
20 each defendant.

21 MS. GULLEY: Good morning, your Honor. Andi Gulley on
22 behalf of Reynolds.

23 MS. MILLER: Good morning, your Honor. Britt Miller
24 on behalf of CDK Global and computer registration.

25 THE COURT: Okay. Very good. Here's the agenda as

1 far as I can tell. One is you guys are going to tell us about
2 the settlement, which is the reason we set this.

3 JUDGE GILBERT: Do you think there is anybody on the
4 phone?

5 THE COURT: Oh, are there people on the phone? I'm
6 sorry. Are there people on the phone for the MDL case?

7 Oh, it's for another case. Okay.

8 JUDGE GILBERT: Sorry.

9 THE COURT: No, that's okay. We are trained to hear
10 the beep.

11 So you're going to tell me about the settlement, at
12 least what you can tell me on the record. I'm going to tell
13 you I've read all of the briefs on the motion to stay. And
14 then Judge Gilbert has asked for a few minutes to talk about
15 what you guys talked about on Friday.

16 MS. GULLEY: Great.

17 THE COURT: All right. So tell me about the
18 settlement first, please.

19 MS. WEDGWORTH: We are currently finalizing the
20 definitive agreement. Our target date to file it with this
21 Court is October 19th. And there may be a little bit of
22 slippage, but we have got strong goals and working hard to do
23 that. We have got a notice in the works. We have got a
24 website in the works. We are talking to claims and notice
25 administrators. We've got the CAFA notice also in the works.

1 So lots of things in the works that will be attached to the
2 definitive settlement agreement when it's filed, again target
3 date October 19th. Hopefully, there's no slippage, but as you
4 know, things happen.

5 THE COURT: Mm-hmm.

6 MS. WEDGWORTH: After October 19th, we would ask for a
7 preliminary hearing on November 2nd, if that works for the
8 Court.

9 THE COURT: November 2nd, I'm going to be in D.C.
10 There's a Civil Rules meeting that's set at that time, and
11 guess what we are talking about?

12 MS. WEDGWORTH: Rule 23.

13 THE COURT: That's in the house. We're talking about
14 MDL rules.

15 MS. GULLEY: Perfect.

16 THE COURT: Yeah. So -- yeah, you guys will be very
17 interested. All kinds of people walk through here, and they're
18 not interested at all in that, but you guys are all very
19 interested.

20 MS. WEDGWORTH: We are.

21 THE COURT: So I can't do that now, and I start a
22 criminal trial on 11/5 that is going to go the entire month and
23 into December. We can carve out some time for you on any day
24 during that time. It will be a motion for preliminary
25 approval?

1 MS. WEDGWORTH: Yes. Would October 30th be a
2 possibility?

3 THE COURT: That whole week -- so the MDL transferee
4 judges' conference is Monday, Tuesday, Wednesday, and the civil
5 rules is Thursday/Friday. I'm completely out of the box that
6 whole week. The week before is bad, too, because I have a
7 two-day fairness hearing on the Chicago Police Department
8 consent decree case. So it's going to be a busy week.

9 MS. WEDGWORTH: Big. Big.

10 THE COURT: Yeah. So the best I could do for you, I
11 think, is the 6th of November, unless you would be ready on
12 October 22nd or -3rd?

13 MS. WEDGWORTH: So if we can take a day or two to
14 confer to see if we can get to --

15 MS. GULLEY: One minute.

16 THE COURT: Oh, sure.

17 MS. WEDGWORTH: You know, your Honor, if November 6th
18 is available for a preliminary hearing, let's go ahead and do
19 that.

20 THE COURT: Okay. We will put you in at 9:15 that
21 day, if we could. It will be day two of a trial. And I pray
22 that day one will include the completion of jury selection, but
23 you can never tell. All right. That sounds fine. So 11/6 for
24 preliminary approval hearing. Okay?

25 MS. WEDGWORTH: And given some slippage with that day,

1 we were shooting to get you to the end of the story sometime in
2 mid-January for a final approval hearing. That's after sending
3 out notice and a period for objection or opt-out. Everyone is
4 comfortable with that. Once those dates are in place, we would
5 shoot for the middle of January.

6 THE COURT: Okay. And why don't we -- and on the 6th
7 of November why don't we see if you guys are feeling like you
8 want to cinch up a date certain and we'll give you one then.
9 Sound good?

10 MS. GULLEY: That would be great.

11 MS. WEDGWORTH: And the plan is that will not
12 interfere with any other litigation going forward.

13 THE COURT: All right. You're not joining the
14 settlement yet?

15 MS. MILLER: No, not that I am aware.

16 THE COURT: Okay. Sobeit. That all works fine. And,
17 you know, we'll keep you guys moving. Those who want to go to
18 the door, we'll be happy to help you get there.

19 MS. WEDGWORTH: So, quickly, the motions you don't
20 need to rule on are 252 of the docket, which is Reynolds motion
21 to dismiss.

22 MS. GULLEY: And compel arbitration.

23 THE COURT: Okay. Now, you still have an arbitration
24 argument, though, right?

25 MS. MILLER: Yes, I do, your Honor.

1 THE COURT: All right. Very good. And so 252.

2 MS. WEDGWORTH: And 344, which was a motion that had
3 been taken off calendar. We sent a notice that we had solved
4 that issue, but it now can be eliminated entirely.

5 THE COURT: Okay.

6 MS. WEDGWORTH: And those, really, are the only two
7 currently.

8 THE COURT: Okay.

9 JUDGE GILBERT: Can I ask you, does this affect any of
10 the discovery motions that are under advisement, or no?
11 Because I think I've got defendants' motion to compel.

12 MS. WEDGWORTH: Does not affect at all from my
13 perspective.

14 MS. GULLEY: So those omnibus motions are basically
15 defendants on the one hand and plaintiffs on the other, and
16 since we are all still parties to them, it shouldn't affect
17 them.

18 THE COURT: Okay.

19 MS. WEDGWORTH: So as to the terms of the settlement,
20 we -- instead of rolling them out piecemeal for you, they will
21 all be in there on October 19th, the target date, or if there's
22 a little slippage, we can tell you that it's a cash settlement
23 and there are no coupons. And this settlement came after long
24 negotiations and culminated in a mediation that lasted over 12
25 hours. So the terms of the settlement, we'll have on

1 October 19th or shortly thereafter when we do file our
2 definitive settlement agreement.

3 THE COURT: Okay. Great.

4 Anything else on the settlement?

5 MS. GULLEY: No, your Honor.

6 THE COURT: Beautiful. All right. Thank you.

7 Now, my next piece is the motion to stay. I have a
8 paragraph that will go on the docket later today. But I'm
9 going to deny the motion to stay because I think
10 there -- whether CVR is a party or a nonparty, they're still
11 going to be very important to the litigation. Within, I think,
12 a week or two, you will know if they're a party, because we're
13 working very hard on those motions to dismiss.

14 What we figured out is that we can't separate CVR's
15 motion out. We have got to rule on all three of them at once.
16 And that takes more time than if we would have just pulled one
17 out, which was maybe my initial thought, and I thought maybe I
18 would have a ruling for you by last Friday, but it will be
19 sometime in the next two weeks, I think, based on my
20 back-and-forth with my law clerk on this.

21 So there will be this period where you will still be
22 in limbo, but you'll have to proceed with the discovery as if
23 they're a party. They may not be a party. They may be a
24 party. But either way, they are going to be important and
25 people are going to be serving discovery on them.

1 It seems to me that you probably have these responses
2 pretty close to go, the one that you wanted 72 hours from the
3 ruling.

4 MS. MILLER: Judge Gilbert gave us slightly longer
5 than that. Since we didn't have a decision on Friday, I think
6 they are due sometime next week.

7 THE COURT: I will not interfere with that whatsoever.
8 They're due, and Kassie is listening to this right now, so she
9 will amend the order. We defer to Judge Gilbert on that
10 deadline.

11 JUDGE GILBERT: Well, I might have to -- I only gave
12 you a week, right?

13 MS. MILLER: Right.

14 JUDGE GILBERT: And so do you want to amend that,
15 since you're going to be ruling soon, to a certain number of
16 days after the ruling is issued, so you don't have to keep
17 coming back with days?

18 MS. MILLER: Certainly. Currently, I believe, it was
19 a week from our last -- our last date, which was this coming
20 Wednesday. So we understood that it was a week. Sometime next
21 week, either Wednesday or Thursday, but if there's another date
22 that your Honor would like to enter, that would be perfectly
23 fine with us.

24 THE COURT: I can't promise the day the ruling's going
25 to be ready. I'm confident it will be ready no later than two

1 Fridays from now. And maybe -- it probably won't be this
2 Friday, but it will be early next week. So it's -- we're
3 talking about a matter of days or maybe even hours different
4 between what you said and what would happen.

5 JUDGE GILBERT: Do you want to say three business days
6 after the ruling the documents should be produced?

7 MS. MILLER: That would be fine by us.

8 THE COURT: I mean, we're talking about days here, and
9 so I don't know that it makes a difference. I'm happy to do
10 that. So the shoe will drop sometime -- so be ready, because
11 the shoe could drop on Friday. It will probably be better to
12 trigger it off that, though, because we don't know the date.

13 MS. MILLER: Sure.

14 THE COURT: But it might be Friday. It might be
15 tomorrow for all I know. But I don't think it will be tomorrow
16 because I have got a very busy day today.

17 MS. MILLER: Hopefully not tomorrow --

18 JUDGE GILBERT: I could just issue an amended order or
19 modify my order from Friday that says based on the discussion
20 held today, that you should produce documents.

21 MS. MILLER: It's our responses to their RFPs.

22 JUDGE GILBERT: Okay. So your responses to their RFPs
23 would be due three business days after the ruling on the motion
24 to dismiss; is that right?

25 THE COURT: Sounds -- that's exactly where the ruling

1 is going to be, so I will leave that with you, which is where I
2 wanted that to be in the first place. But I realized it was
3 all contingent on how fast I could get a motion to dismiss
4 ruling done, and that will be done soon.

5 MS. MILLER: Appreciate it, your Honor. Thank you.

6 THE COURT: So that's good. And that would be
7 literally a paragraph that denies the stay motions. Because
8 the ruling is going to come out quickly, it's really a
9 nonevent.

10 Okay. That's all I have for today. Do any of you
11 guys have anything before I turn the floor over to Judge
12 Gilbert?

13 MR. NEMELKE: I have one thing.

14 THE COURT: Yep. Go ahead.

15 MR. NEMELKE: It has to do with a trial date for
16 Authenticom.

17 THE COURT: Okay.

18 MR. NEMELKE: Judge Gilbert sua sponte extended the
19 factual deadline by two months. And I think part of it is an
20 issue, you know, Authenticom has ping-ponged from court and
21 from judge to judge. Sometimes we assume things that we maybe
22 should have done a better job educating the Court and Judge
23 Gilbert about. Judge Gilbert, you did say that some of our
24 arguments were at the 30,000-feet level. And one of them that
25 we would like to argue today is that the Authenticom need for

1 the trial and the directive from the Seventh Circuit is every
2 bit as needed now as it was a year ago when the Seventh
3 Circuit issued its ruling.

4 And to just bring it down, four points very quickly,
5 from 30,000 feet to actually facts, just to give you insight on
6 how Authenticom is struggling. In August of 2017, after we got
7 the preliminary injunction, Authenticom was serving 4500 --
8 4,500 CDK dealers. Today, because of defendants' joint
9 blocking, it's only serving 614. Go -- that many dealers would
10 have to sever their relationship with Authenticom because of
11 the interruptions of its service. With employees, it had 110
12 employees. It had to lay off two-thirds of its workforce, and
13 it's now operating on a shoestring, 36 employees. Vendors, it
14 almost -- at one time it served almost every vendor in this
15 entire industry. Today it's dependent on just a few large
16 vendors to sustain its business, and if it were to lose one or
17 two of them, it would be devastating, and it's because of the
18 blocking.

19 Authenticom is cash-flow insolvent. It's in breach of
20 its loan obligation. Its bank has extended a forbearance
21 agreement in monthly installments. It was June 2018 and now
22 it's December 2018 when the forbearance agreement expires. And
23 Authenticom is in these dire straits because of the very
24 allegations at issue in this case, the joint blocking of and
25 the coordination of defendants.

1 And, you know, the Seventh Circuit said, "We
2 appreciate the District Court's concern to ensure that a
3 potentially sound anti-trust case should not disappear before
4 its eyes because the plaintiff runs a high risk of running out
5 of business or the litigation drags on." And now we're here in
6 this MDL so the case won't disappear, but that engine that's
7 been driving it from the start may. And as your Honor, Judge
8 Gilbert, said, "Authenticom took the dive and led the charge
9 and the entire industry jumped in, including my clients, the
10 direct purchasers, the vendors, and the dealers. And we're
11 very happy to have the dealers here with us and we're very
12 happy for their settlement."

13 But while these industries discriminately survive --
14 will survive -- Authenticom may not. And it's not just about
15 the harm to Authenticom. My clients, the vendors, remember,
16 after they started -- based on allegations, the price increases
17 to Cox went up 500 percent for the same services. They've had
18 no choice but to pass onto those fees, cost base tens and tens
19 of millions of dollars every year that CDK runs with data
20 access that they have to pass down to these dealers, not much
21 of them, not 100 percent. And there's some poetic irony, if I
22 could point out, with the two-month extension on the case
23 schedule, if you look at it, that puts summary judgment and
24 *Daubert* briefing ending on November 6th, if all the dates move
25 two months, November 6, 2019.

1 The Seventh Circuit issued its ruling on November 6th,
2 the same day, 2017, two years before. And in that opinion it
3 said, "We urge the District Court to do what it can to expedite
4 its final judgment."

5 We would respectfully submit that two years after that
6 injunction to even be done with summary judgment, not even at
7 trial yet, is not consistent with that.

8 THE COURT: You guys have sent some mixed signals, I
9 have to say. And I've addressed that in one of my prior
10 opinions where I quoted Professor Issacharoff. And then you
11 asked for more discovery, and you haven't taken a consistent
12 line in this. I get your point. I read the Seventh Circuit
13 opinion very carefully, and I know Judge St. Eve did as well
14 and that she set you on a schedule.

15 MR. NEMELKE: Right.

16 THE COURT: And when Judge St. Eve sets a schedule,
17 it's just probably going to the tightest schedule it can be;
18 that's just based on 16 years of her being a judge. I was
19 happy to adhere to that schedule as closely as I can.
20 Discovery supervision is with Judge Gilbert. He's been hearing
21 you and meeting with you on a very regular basis and spending
22 an hour and 45 minutes with you at a time. The fact that he's
23 extended the discovery to April 15th doesn't mean *the Daubert*
24 schedule has to go to November 6th. It doesn't mean that at
25 all.

1 I, you know, you guys -- these are very deep and
2 talented law firms. I know that. And there's no reason that
3 you guys can't move as fast as people need to move. And if you
4 were in Eastern District of Virginia, you would be tap-dancing.
5 Maybe if you were back in Wisconsin you would be tap-dancing,
6 too. So the one doesn't necessarily follow from the other.
7 And if Authenticom's situation is more dire -- my
8 understanding, it was very dire when Professor Issacharoff made
9 this comment. My understanding is it was less dire later when
10 you guys took positions in discovery that were not quite of the
11 same urgency as what Professor Issacharoff suggested. If the
12 situation is continuing to change and becoming worse for
13 Authenticom, those are facts that we need to know. And if you
14 want to -- you should certainly discuss with the other side,
15 but these law firms are all capable -- all of the law firms in
16 this case are capable of moving quickly.

17 MR. NEMELKE: So that's all, actually, we would ask,
18 if we could would try to make up those two months in those
19 later dates, in the summary judgment and *Daubert*, we can confer
20 with defendants --

21 THE COURT: Confer with the other side, but I have no
22 doubt that these law firms are capable of moving mountains.
23 I've seen it happen, a good part of it happening. I know that
24 this can happen.

25 MR. NEMELKE: And then the second request --

1 JUDGE GILBERT: Well, what is currently -- one thing I
2 didn't address on -- I'm sorry to interrupt. Is that okay?

3 THE COURT: Yeah. Sure.

4 JUDGE GILBERT: One thing I didn't address on Friday,
5 because we were running out of time, was how an extension of
6 the fact discovery date would or should extend the expert
7 discovery date. Okay? As Judge Dow said, they don't
8 necessarily have to move in tandem, they often do. And you --
9 and said in my order that I sua sponte extended the fact
10 discovery closing date for the reasons we discussed on Friday.
11 Sua sponte was done because there actually was not a motion
12 pending. But the defendants did ask in their response, or in
13 their deposition protocol briefing, that if we were going to
14 take the depositions on kind of a break-neck schedule, they
15 actually asked for that April 15th date. So although I was not
16 granting a motion by the defendants formally to extend the
17 date, they had asked for that in their deposition briefing.
18 And in order to take it off who was going to move, because
19 sometimes that's a game of chicken in a case like this, I took
20 it upon myself for the reasons I said on Friday to say, "Look,
21 I think we ought to move it." And I still think that had to be
22 done, and I'm going to address some of that now.

23 But if you want to talk about what your discovery
24 schedule would be and what an expert disclosure date would be
25 for 26(a)(2) or 26(a)(2)(B) or (C), experts would be, which

1 works in a dep schedule like this before the end of fact
2 discovery --

3 MR. NEMELKE: Mm-hmm.

4 JUDGE GILBERT: -- I'm willing to entertain that.

5 MR. NEMELKE: Okay.

6 JUDGE GILBERT: And if that's going to be on my plate,
7 I'm willing to entertain --

8 MR. NEMELKE: That's all we could ask of you.

9 JUDGE GILBERT: Well, yeah. Talk to the other side
10 and see if it works. But that would require front-loading
11 depositions and then your experts are going to be at the back
12 end, but that's not impossible to do.

13 MR. NEMELKE: Right.

14 JUDGE GILBERT: And if you wanted to keep your
15 November 6th date as Judge Dow was saying, I'm not opposed to
16 that. The facts that you talked about today with Authenticom
17 were nowhere in the record that I had in front of me. And I
18 recognize that you said you're getting bounced around between
19 judges, a little bit. I mean, I read the docket, too, and I
20 read all of Judge St. Eve and Judge Dow's opinions before I got
21 on the bench with you on Friday, trying to give a little
22 continuity. But I, too, saw the riding two horses with respect
23 to Authenticom. And I also saw plaintiffs asking for a
24 tremendous amount of discovery, which is somehow -- which I
25 felt was incompatible with let's get this tried next week.

1 Okay? And I'm going to address a little bit of that in a
2 second. So there's a -- there's a push and pull on that. But
3 I'm certainly not opposed to getting you done on a schedule
4 that allows you to continue where you are.

5 You said you wanted a trial date. I don't know who
6 can address that.

7 THE COURT: I can give you a -- I don't know how I can
8 give you a trial date before -- I don't know how we can do a
9 trial before I ruled on all of these motions, but I can give
10 you a trial date.

11 MR. NEMELKE: Well, I just wondered if we could go
12 back to Judge Peterson's conference and get on the calendar.

13 THE COURT: Oh, sure.

14 MR. NEMELKE: That's all I was wanting was to get on
15 the calendar.

16 THE COURT: Tell me what the worst-case scenario is
17 for how much time you need for a trial.

18 MR. NEMELKE: Well, we already had a trial date set
19 for October 22nd. We wanted two weeks. They asked for three
20 weeks. And so Judge Peterson had a three-week trial that was
21 supposed to start October 22nd this year.

22 MS. MILLER: Your Honor --

23 THE COURT: Okay. So you're going to give me your
24 motions whenever you're going to give me your motions, so we
25 have to have -- and they could be -- in a case like this you

1 guys could have lots of *Daubert* motions, and they could be
2 complicated *Daubert* motions, and you're going to have all kinds
3 of numbers running at me and I'm a history major, so you're
4 going to have to deal with that. What I think you ought to do
5 about a trial date, right now I can tell you that 2020 is wide
6 open. You can have any trial date you want in 2020. I have
7 not set any trials in 2020, and I can give you three straight
8 weeks pretty much any time you want. But you guys need to talk
9 amongst -- you need to tell me who has got things going.
10 Probably nobody has anything on their calendar for 2020 yet,
11 but that's -- what my suggestion is, now you know what your
12 discovery deadline is going to be. Judge Gilbert's suggestion
13 was excellent. There's no reason you can't front-load the
14 things you need so that you can keep the experts where you want
15 them.

16 MR. NEMELKE: Yes.

17 THE COURT: And you can keep these *Daubert* motions
18 where you want them.

19 MR. NEMELKE: Yes.

20 THE COURT: And then you can give me a sensible trial
21 date that comes sometime after the *Daubert* motions and all of
22 the other motions are filed and gives me time to resolve them
23 with the hearing the Seventh Circuit probably will require me
24 to have if there's disputed issues of fact on *Daubert*. And
25 that's all stuff you guys can plan for, I guess, and give me a

1 status report on that. The discovery, even the expert
2 discovery, that's all going to be over here.

3 MR. NEMELKE: Okay.

4 THE COURT: But I have no problem with anything that
5 Judge Gilbert said about how he wants to do this.

6 You're dying to say something. Go ahead.

7 (Laughter.)

8 THE COURT: Do you want to say something?

9 MS. MILLER: Yes, your Honor. Do you want to start?
10 I'll be the floor person.

11 MS. GULLEY: So we haven't heard this before today.
12 Obviously, to the extent we're going to have written discussion
13 about the schedule, it makes sense for us to all discuss it
14 rather than hear about it today. But Judge St. Eve -- we
15 disagree with this refrain about what is happening to
16 Authenticom. Judge St. Eve allowed us to take discovery. We
17 deposed the bank. We deposed their corporate representative.
18 We very much disagree with the statements that were just made.

19 Judge Peterson --

20 THE COURT: They're either true or they're not.

21 MS. GULLEY: Exactly.

22 THE COURT: And the circumstances may have changed
23 since any discovery you did while Judge St. Eve had the case is
24 at least six months old, so that may not be accurate anymore.
25 That's something you guys can discuss, and you probably don't

1 need another round of depositions to lay those cards on the
2 table.

3 MS. GULLEY: And we sought the additional discovery,
4 you know, for the interim period and so forth. We don't have
5 that yet -- all of it, but you're right, there's facts and
6 there's not facts.

7 Judge Peterson in Wisconsin after the Seventh Circuit
8 ruling, however, did recognize before when he stayed the case
9 before it came here that Authenticom can't drive the bus of the
10 whole case. And I think that Magistrate Judge Gilbert
11 recognized that we can't have it both ways. We can take 90
12 depositions. I mean, right now the schedule is 90 depositions
13 in six months; that's still a lot.

14 THE COURT: Right.

15 MS. GULLEY: And, you know, we're only talking about
16 two months. The question isn't can Authenticom -- what's going
17 to happen forever. It's can we extend the schedule two
18 months --

19 THE COURT: Mm-hmm.

20 MS. GULLEY: -- to allow for the incredible burden of
21 discovery that they're asking from truly just two defendants.
22 I mean, I know there's CVR with JV, but truly it's just us two
23 are defending all of this.

24 THE COURT: Mm-hmm.

25 MS. GULLEY: And so I think, you know, to the extent

1 we talked about moving the schedule, there's going to have to
2 be changes to the schedule. I mean, it's inevitable. At some
3 point somebody -- in this game of chicken -- is going to say,
4 "We can't do this." But we're going to try. We're going to
5 try to do it on the schedule that's been given. But the idea
6 that we're going to be simultaneously taking care of experts
7 that are currently due in March and a response in March, and
8 there's one in April.

9 MR. NEMELKE: March 15th.

10 MS. GULLEY: March 15th. And then the responses on
11 April 15th, when discovery doesn't even begin -- the first
12 deposition begins three days after the substantial completion
13 deadline of discovery from plaintiff. So although we have
14 produced millions of pages of documents, we're not expecting to
15 see Mr. Cattrell's custodial documents and other important
16 witnesses custodial documents until October 12th. So
17 front-loading is going to be pretty onerous on the defendants.
18 We don't even have -- we don't even know who we're deposing
19 yet.

20 MS. MILLER: She said it very succinctly. The problem
21 we have trying to overlap fact discovery with expert discovery
22 is just that. We don't have discovery from a number of the
23 plaintiffs yet. So it's very hard for us to front-load
24 schedules to prepare for experts, when we don't have discovery
25 from a number of the people that are --

1 THE COURT: And if they want to move you faster,
2 they're going to have to give you what it takes. So maybe they
3 need to move faster, too --

4 MR. NEMELKE: Right.

5 THE COURT: -- if that's what they want.

6 I mean all of this, that's why we're here. We're here
7 to be the equity that solves this problem as best we can. I
8 don't know the answer yet. All I know is that the conversation
9 Judge Gilbert and I had before we came out was what happened
10 last Friday and the reasons for extending the discovery to
11 April 15th seemed completely sensible to me based on what he
12 told me.

13 And you guys can then figure out what happens after
14 that. And you can, you know, -- I think it makes sense to
15 stage your depositions in a way that's most efficient. Maybe
16 most efficient is whose documents do you already have, do them
17 first. Maybe it's who's -- what discovery will help us move
18 the expert and the summary judgment and every other piece of
19 this case forward. I don't know what it is. You guys know
20 this case better than we'll ever know it. But the only message
21 I can give is to be efficient.

22 And, you know, I don't know the facts of Authenticom
23 past what the Seventh Circuit told me. But the Seventh Circuit
24 did say that this would be a case where the assigned judges
25 should pay more attention to expedition than other cases

1 because there's a party that may be adversely affected by
2 delay. That's basically what they said.

3 Now, as I said, we have gotten mixed signals from the
4 plaintiffs on this. And I previously addressed that in one of
5 my opinions, in fact. If you want to search the opinion,
6 search for Issacharoff because that's the quote I tied to my
7 discussion. But you guys need to work this out amongst
8 yourselves first. Then you need to come back with a concrete
9 plan. If you have a disagreement about what that plan ought to
10 be, that's what we're here for.

11 MR. NEMELKE: Just one thing in front of Authenticom.
12 We're doing coordinated discovery at defendants' insistence.
13 Authenticom wanted an offering, an exit, so they could move
14 more quickly. The fact that -- Authenticom has never even been
15 saying that it should take all of this burdensome discovery to
16 slow things down. It is because we are seeking coordinated,
17 unified discovery on behalf of the entire industry that
18 Authenticom is in the middle of --

19 THE COURT: Yeah. But you got that not only because
20 of what the defendants wanted, you got that because the JPML
21 ordered that.

22 MR. NEMELKE: Exactly.

23 MS. GULLEY: And they represent all of those car --

24 THE COURT: The JPML is also like we are, they're in
25 the middle. And, you know, I think your other clients might

1 not want to go off the streamlined version of this case that
2 Authenticom would want, and that's something you guys are going
3 to have to work towards.

4 MR. NEMELKE: I can speak on behalf of the vendor
5 class and behalf of my client that they absolutely want the
6 quicker schedule. They are suffering, too.

7 THE COURT: Then that's when you need to stake a
8 consistent position on that because I don't feel like that's
9 the message we were getting since we got the case. And I don't
10 know that you gave the message to Judge St. Eve either because
11 she did not set a shotgun schedule when she could have. But we
12 are where we are today.

13 MR. NEMELKE: Right.

14 THE COURT: And what you guys need to do is come up
15 with a proposal, and if you disagree on things, you need to
16 bring them to us as quickly as you can.

17 Okay. Judge Gilbert.

18 JUDGE GILBERT: I almost don't know whether I should
19 take up your -- you have other cases here, right, that are
20 waiting.

21 Well, let me say two things. I don't have to take you
22 down to my courtroom. Let me say a couple of things.

23 We had a full and fair hearing on a lot of these
24 issues on Friday. Full and fair, that's a stock word. We had
25 a full hearing. Right? I'm still where I was at the end.

1 Things are coming out today nobody said on Friday,
2 okay? And I still am willing to listen to arguments at a grass
3 roots level as opposed to a 30,000-foot level. I mean, I think
4 part of the issue that I am dealing with is, for example, when
5 the plaintiffs tell me we need to take 45 depositions and we
6 want to take all of those, plus the depositions that the
7 defendants want by February 15th, without anybody telling me
8 who these deponents are and whether -- what they're necessary
9 to. I have a hard time believing that 104 depositions need to
10 be taken in this case at the same time you're telling us that
11 we've got to get this done lickety-split. All right?

12 So I think you need to regroup on this a little bit
13 and figure out what you want to do and how you want to do it,
14 and talk to defense counsel. I can let it in -- the necessity
15 of doing this -- but there's cognitive dissidence when you tell
16 me you want to take 104 deposition by February 15th. And you
17 know, you have different people on the plaintiffs' side, many
18 of them, almost all of who are represented by Keller Huber, and
19 there's -- if you tell us everybody wants to move really
20 quickly, but still take 104 depositions, then you need to tell
21 me who those people are and why they need to be deposed, and I
22 have to hear from the defendants on it. Because there's two
23 sides to that that's of interest right now.

24 And as I said on Friday, I don't know why we have to
25 have such brain damage, if it's not necessary. Now, if it's

1 necessary, I can deal with it. But -- and I also need to
2 understand better this, you know, as Judge Dow said, about the
3 mixed signals on the Authenticom financial situation. I
4 addressed that on Friday, and I quoted some briefs that I had.
5 And I didn't get a response to what the defendants said in
6 their brief as to plaintiffs, even though you filed a reply.

7 So, again, what I was going to tell you is I'm willing
8 to have this process continued. All right? If the plaintiffs
9 tell me "I can't do this in 30 depositions and here's why,"
10 then I need to know why. If, on the other hand, you guys
11 decide to regroup and say, "I want less because I want to get
12 this thing done," and, you know, there's no God-given right to
13 depose everybody who is going to testify at trial, go to trial.

14 All right? Take a few depositions, look at some documents,
15 take the case to trial. You can do that, too. So, again,
16 there's no one-size-fits-all.

17 The message I wanted to give to you is that I'm
18 willing to continue to talk to you, either on a motion for a
19 status hearing or a motion for a Rule 16 conference on
20 depositions or anything. But some stuff has to give, depending
21 upon how we're doing. And you have to give me enough
22 information to be able to help you and help the defendants,
23 too, make these decisions well.

24 MR. NEMELKE: Okay.

25 THE COURT: What I was going to say is we ended --

1 because I had that settlement conference that I had to go
2 to -- but I wanted the message to you to be I'm willing to
3 continue to work with you on this in a constructive and
4 productive way --

5 MR. NEMELKE: We appreciate that helpful guidance.

6 THE COURT: -- if you give me some more information.
7 And I need the information in order to help you. And the first
8 thing you do is you have to talk amongst yourselves, because
9 I'm going to say to you, "Did you talk?"

10 MR. NEMELKE: Right.

11 JUDGE GILBERT: And, you know, "Who's being
12 unreasonable here and what's the deal?"

13 MR. NEMELKE: I understand.

14 JUDGE GILBERT: So I tried to give some guidance on
15 Friday on a broad level, but I'm happy to get back into the
16 weeds, too, if I need to.

17 MR. NEMELKE: Thank you for that help.

18 JUDGE GILBERT: Thank you.

19 MS. MILLER: Thank you.

20 THE COURT: The one other thing I want to say for you
21 guys, if you -- when you are ready to give further input to
22 Judge Gilbert about whether you want the schedule past this
23 April 15th to stay or move, just tee it up with him on that
24 schedule. However, in terms of a trial date, give some serious
25 thought to what you think is coming down the pike, what a

1 reasonable amount of time for me to sort that out would be. In
2 other words, if you're going to file 20 *Daubert* motions, don't
3 set a trial date two months out. It's not going to happen. If
4 you're going to file two *Daubert* motions, that might be more
5 realistic. But think about that, and then I will give you
6 three weeks of my calendar in 2020 whenever you guys want it.

7 MR. NEMELKE: I don't want to mislead you, your Honor.
8 We actually would like to -- for now, Authenticom would like to
9 go back to Wisconsin under the MDL statute.

10 THE COURT: Oh, you would like to be tried there.
11 Okay. That's one of the --

12 MR. NEMELKE: My other clients may decide to stay in
13 front of your Honor. They're based in La Crosse, Wisconsin;
14 that's their home court.

15 THE COURT: Remand is certainly an issue we are
16 discussing in our MDL subcommittee, and when the time comes
17 for -- when pretrial proceedings are done, if you would like to
18 be remanded to Wisconsin, you can file a motion for it and they
19 can take their position on it.

20 MS. MILLER: And, your Honor, that's to the point that
21 Mr. Nemelke made earlier. He wants to try to get on Judge
22 Peterson's calendar. We obviously oppose that in light of all
23 of the things that your Honor just said in terms of we may have
24 20 *Daubert* motions. We may have, you know, very long summary
25 judgment motions, and calling and trying to reserve three weeks

1 in Judge Peterson's calendar for some unknown date seems
2 inappropriate.

3 THE COURT: I don't have anything to do with Judge
4 Peterson's calendar. So if you want to call Judge Peterson,
5 you may call Judge Peterson. He may tell you, "I can't do
6 anything until I have the cases returned to me." And I can't
7 return the case -- I shouldn't return the case under the JPML's
8 order sending it to me until pretrial proceedings are
9 concluded. But in terms of a motion to remand after that,
10 there's certainly a trend in the cases that would support
11 remand, and there's a trend in the cases that supports -- you
12 know, Judge Pallmeyer has gone to other states to try cases.
13 Judge Peterson actually knows a lot about this case, and so
14 there wouldn't be any reason for me to try a case in Wisconsin.
15 If you're going back to Wisconsin, he'll try the case, not me.
16 As opposed to many MDLs where the transferee judges don't know
17 anything, so it makes sense to use inter-circuit transfer. But
18 that won't be happening in this case. First of all, I'm in the
19 same circuit. But if this case goes back to Wisconsin, it will
20 go back to Judge Peterson.

21 But we're way ahead of the game. I don't control
22 Judge Peterson's calendar. I'm not going to forbid you from
23 calling Judge Peterson. I'm not going to order you to call
24 Judge Peterson. He has his own life and his own trial
25 calendar. And if you guys -- you know, do what you do there.

1 I'm not -- but I can't give you a trial date with Judge
2 Peterson.

3 MR. NEMELKE: I just wanted permission to be able to
4 go back and ask for a trial date.

5 THE COURT: You can do whatever you want with Judge
6 Peterson. I don't know what he's going to tell you, but I'm not
7 enjoining you from calling Judge Peterson. Now, he may say, "I
8 have a jurisdiction problem."

9 MR. NEMELKE: Right.

10 THE COURT: And he will have that jurisdiction
11 problem. I'm not going to remand the case before its time.

12 MR. NEMELKE: Right.

13 THE COURT: Anything else for today?

14 MS. MILLER: I mean, your Honor, if he wants to try to
15 make an ex parte phone call, we're not looking to get a hearing
16 in front of Judge Peterson. We're not even sure he has
17 jurisdiction to hear a motion for a trial date in light of the
18 fact that we're in front of your Honor, but...

19 THE COURT: Those are issues you guys would have to
20 sort out. I'm sure if I got a motion -- first of all, I would
21 not take a phone call.

22 MR. NEMELKE: Yeah. I wouldn't be calling him.

23 THE COURT: And I'm sure you wouldn't make a phone
24 call. So I don't know how you do it actually because I don't
25 believe he has the case. But you figure that out. I hadn't

1 thought about -- obviously, I hadn't thought about it because
2 when I started to talk about getting a trial date with you
3 guys, you guys don't want me. I got that.

4 MR. NEMELKE: No, no. Some of my clients might want
5 you.

6 MS. WEDGWORTH: Your Honor, the dealership class wants
7 you.

8 (Laughter.)

9 MS. McNULTY: This seems like an appropriate time, as
10 liaison counsel, I am proposing that we will host an in-person
11 meet and confer to work through some of these issues, and we
12 appreciate the Court's generosity in giving us guidance both
13 last week and again today. So we'll iron some of this out.

14 THE COURT: All I can do about Judge Peterson is -- I
15 don't know what the vehicle is, but I'm neither urging you or
16 enjoining you from having anything to do with Judge Peterson.

17 MS. McNULTY: Thank you, your Honor.

18 THE COURT: Well, thank you, guys. So I will give you
19 a ruling in the next -- by next Friday, I'm assuming. And I
20 will track you guys through Judge Gilbert. But if you want to
21 see me on anything, you have a standing invitation to ask for a
22 status, just like you did today, anytime.

23 MR. NEMELKE: Thank you.

24 JUDGE GILBERT: And as for me, wait for your ruling on
25 a motion to dismiss. Have a meet and confer. It sounds like

1 it could benefit everybody to talk in person and not just raise
2 stuff here.

3 MS. McNULTY: Yes.

4 JUDGE GILBERT: After you have that meet and confer,
5 please put together a motion for a status hearing in front of
6 me on discovery, scheduling, and other issues. Give me an
7 agenda for it. I'll pick a date for it. We'll sit down and
8 I'll give you some time so that we can work some of your stuff
9 out. But, first, talk amongst yourselves. Once you've done
10 that, make a motion to me and tell me what we want on the
11 agenda and then what the parties' different positions briefly
12 are on that so that we can get together and I can move you
13 forward.

14 MR. NEMELKE: Thank you. Appreciate that.

15 MS. MILLER: Thank you, your Honor.

16 THE COURT: Very good. See you soon. Take care,
17 everybody.

18 (Proceedings concluded.)

19 * * * * *

20 C E R T I F I C A T E

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter.

23
24
25 /s/Kristin M. Ashenhurst, CSR, RDR, CRR October 15, 2018
Kristin M. Ashenhurst, CSR, RDR, CRR Date
Federal Official Court Reporter